

(5)
No. 87-1295

Supreme Court, U.S.
FILED
JUL 21 1988

ROBERT E. SPANGLER, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1988

UNITED STATES OF AMERICA, PETITIONER

v.

ANDREW SOKOLOW

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI
FILED FEBRUARY 2, 1988
CERTIORARI GRANTED JUNE 6, 1988

7/19/88

In the Supreme Court of the United States

OCTOBER TERM, 1988

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UNITED STATES OF AMERICA, PETITIONER

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ANDREW SOKOLOW

*ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT*

JOINT APPENDIX

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Date	(Docu- ment) No.	Proceedings
1984		
Jul 25		Affidavit of Search Warrant—One Brown Shoulder Bag with black pockets on each end, initials "BDH", measuring 14x12½x8 Affidavit of John D. McCarthy (M84-0246MG) Search Warrant issued
Jul 26		COMPLAINT, Affidavit of John D. McCarthy, Task Force Agent Warrant of Arrest, issued: Bail set at \$75,000. <i>GEDAN</i>
Aug. 2	1	<i>EP</i> : INDICTMENT—PS ordered & issued, retn 8-3-84 @ 2:00 p.m. (T) (YI) <i>TOKAIRIN</i>
Oct. 10	15	Notice of Motion—10-26-84 @ 2:00 p.m. (T)—Motion to Suppress Evidence; Memorandum in Support of Motion to Suppress Evidence <i>10-10-84</i>
Oct. 25	17	Government's Memorandum in Opposition to Defendant's Motion to Suppress Evidence
Oct. 29		<i>EP</i> : PT & M/Suppress: PT conference pursuant to Rule 325, Deft witness: Janet Norian, CST, Andrew Sokolow, CST. USA & Deft's atty to stipulate to facts and to items to be suppressed. Further hrng on M/Suppress set

Date	(Docu- ment) No.	Proceedings
		for 10-30-84 @ 11:00 a.m. (T). Santoki to prepare order regarding PT Conference. (DO) <i>TOKAIRIN</i>
Oct. 30	18	<i>EP</i> : Further Hrng on M/Suppress—"M/Quash Subpoena" filed in open court @ 11:13 a.m. Court granted the M/Quash Subpoena. Govt witness Joseph Brostowski: CST. Santoki & Goldberg to file closing memos regarding stipulated facts as to M/Suppress & submit to Magis Tokairin. (DO) <i>TOKAIRIN</i>
Nov. 1	19	Stipulated Facts <i>EP</i> : Further Hrng M/Suppress: DENIED. Santoki to prepare ORDER (DO) <i>TOKAIRIN</i>
Nov. 6	20	<i>EP</i> : M/Withdrawal of Not Guilty Plea & to Plea Anew—"Memorandum of Plea Agreement" filed. Hearing contd until 12-10-84 @ 2:00 p.m. (K). Ordered that the pd beginning 11-6-84 to and including 12-10-84 be excluded from the computation of the Speedy Trial Requirements. Court will rule on the M/Withdrawal of Not Guilty plea etc after the disposition of the M/Suppress. (DO) <i>KING</i>

Date	(Docu- ment) No.	Proceedings
Nov. 15	22	Magistrate's Report and Recommendation [sic] Denying Defendant's Motion to Suppress <i>TOKAIRIN</i> CC: Goldberg, Santoki
Nov. 26	23	Defendant's Written Objections to Magistrates Report and Recommendation Denying Defendant's Motion to Suppress Evidence <i>Taken Under Advisement</i> —referred to KING
	25	Government's Memorandum in Opposition to Defendant's Objections to Magistrate's Report and Recommendation Denying Defendant's Motion to Suppress
Dec. 11		EP: M/Withdrawal of Not Guilty Plea and to Plea Anew & Appeal from the Magistrate. Magistrate order: Affirmed. Deft sworn. Adv. of rights. Questioned. M/WD of Not Guilty Plea & to Plea Anew; Granted. Conditional Guilty plea entered. Referred for presentence investigation & report. SENTENCE: 01-15-85 @ 2:00 p.m. (K) (Stacy Reinier/Knipes) <i>KING</i>
Dec. 14	29	NOTICE—SENTENCE contd to 01-16-85 @ 9:30 a.m. (K)

Date	(Docu- ment) No.	Proceedings
1985		
Jan. 16		EP: Sentencing: Adj 5 yrs impr, with 3 yrs SPT purs to 18:4205(b)(2) MITTIMUS stayed to 01-30-85 @ 10:00 a.m. Bond contd. In the event that a Notice of Appeal is filed, the present bond with the following additional conditions will cont pending appeal: 1. That the deft continue with the programs outlined in the Presentence Report 2. That the deft report to the Probation Office at such time as det by the Probation Office. (TC) <i>KING</i>
	30	JUDGMENT & COMMITMENT <i>KING</i>
Jan. 24	31	NOTICE OF APPEAL (By Defendant)
Feb. 12	34	ORDER DENYING Defendant's Motion to Suppress Evidence <i>KING</i> cc: Santoki, Goldberg
1986		
Aug. 4	44	AMENDED ORDER 9th CCA—Submission of this case is hereby vacated. Case is remanded for a period of 90 days with limited purpose of making the findings.

Date	(Docu- ment) No.	Proceedings
		This panel shall retain jurisdiction over the appeal following remand when the case will be resubmitted without further order from this Court. cc: USM, USPO, Goldberg, Judge King's clerk, Enoki/Santoki Judge King
Aug. 14		EP: Conference: Discussion held regarding Conference on Remand - Hearing Responding to Order of 9th Circuit set for Thursday, 09-22-86 at 2:00 (K) (TC) KING
Sep. 18	45	Government's Statement of Facts and Proposed Findings Upon Remand cc: Judge King
Sept. 22		EP: Evidentiary Hearing on Remand from the Ninth Circuit for the District Court to Make Findings on Four Issues. Govt's witnesses: John McCarthy and Richard Kempshall, CST. Deft Andrew Sokolow, CST on his own behalf. The Court finds that: 1) The deft reasonably believed that he was not free to leave at the initial curbside stop; 2) That the govt curbside stop was supported by a founded

Date	(Docu- ment) No.	Proceedings
		suspicion that the deft was engaged in criminal activity 3) That the deft did not consent to accompany the officers into the DEA office; and 4) That the detention of the deft in the DEA office constituted the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time. (ERS - Jon Okimoto) KING
Sept. 23	46	Findings Pursuant To Remand ORDER KING cc: Santoki, Goldberg, 9CCA (thru AJR)
1988		
June 1	48	JUDGMENT - 9CCA - Judgment of District Court: REVERSED & REMANDED [Filed & entered 9CCA 01-28-87] cc: USA, Goldberg, USPO, USM, Judge King, Ctrm Deputy to Judge King

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 85-1021

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

ANDREW SOKOLOW, DEFENDANT-APPELLANT

[Filed Aug. 2, 1984]

Judge SAMUEL P. KING

DATE	FILINGS—PROCEEDINGS
1985	
JULY 12	ARGUED & SUBMITTED BEFORE: FERGUSON, NORRIS & WIGGINS, CJJ.cmk
1986	
June 06	Filed Order (FERGUSON, NORRIS & WIGGINS, CJJ) Both parties are ordered to submit supplemental briefs of no more than 20 pages on the question of whether the detention of Sokolow in the DEA airport office constituted a "de facto" arrest, as distinguished from an investigative stop. The briefs shall be filed no later than 14 days after the date of this order. The case shall stand resubmitted upon the filing of the supplemental briefs. -ot-

DATE
July 25

FILINGS—PROCEEDINGS

July 25	Filed Order (FERGUSON, NORRIS & WIGGINS, CJJ) the case is remanded for a period of 90 days with the limited purpose [sic] of making the following findings: 1. Whether at the initial curbside stop, Sokolow reasonably believed that he was not free to leave. 2. Whether the initial curbside stop supported by a founded suspicion that Sokolow was engaged in criminal activity. 3. Whether Sokolow consented to accompany [sic] the officers into the DEA office. 4. Whether the detention of Sokolow in the DEA office constituted "the latest [sic] intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time.["] This panel shall retain jurisdiction over the appeal following remand. tsp
1986 Jul 31	Filed Amended Order (FERGUSON, NORRIS & WIGGINS, CJJ) Submission of this case is hereby vacated. The case is remanded[d] for a period of 90 days with the limited purpose of making the following findings: (SEE CASE FILE) -ot-
OCT 2	Rec'd as of 9/29 copy of dc order re: remand per order of 7/25. (PANEL)
1987 JAN 28	ORDERED OPINION (NORRIS) FILED & JUDG. TO BE FILED & ENTD.
JAN 28	FILED OPINION—REVERSED & REMANDED. (WIGGINS, DISSENTING)

DATE	FILINGS—PROCEEDINGS
JAN 28	FILED AND ENTERED JUDGMENT -ot-
Mar 10	Filed Order (FERGUSON, NORRIS & WIGGINS) The opinion is ordered amended in the following respects: On page 9 of the slip opinion, delete the para[g]raph beginning "Nor is it in any way suspicious. . . ." In its stead, insert the following paragraph: SEE CASE FILE.
Mar 10	Filed Amended Opinion—reversed & remanded (Wiggins, dissenting) SEE CASE FILE. -ot-
Nov 04	Filed Second Amended Opinion—reversed & remanded (WIGGINS, dissenting) SEE CASE FILE. -ot-
1988	
May 11	Filed order (FERGUSON, NORRIS, WIGGINS, CJJ) the petition for rehearing is denied and the suggestion for rehearing en banc is rejected. tsp
May 27	MANDATE ISSUED

SEARCH WARRANT ON WRITTEN AFFIDAVIT

UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

Docket No. 84-0246MG

UNITED STATES OF AMERICA

v.

ONE BROWN SHOULDER BAG WITH BLACK POCKETS ON EACH END, INITIALS "BDH", MEASURING 14" × 12½" × 8"

To: any duly authorized federal law enforcement officer

Affidavit(s) having been made before me by the below-named affiant that he/she has reason to believe that (on the premises known as) one brown shoulder bag with black pockets on each end and black carrying strap, with the initials "BDH" engraved in gold on the bag, measuring 14" × 12½" × 8" in the District of Hawaii there is now being concealed certain property, namely controlled substances held in violation of Title 21, United States Code, Sections 841(a)(1) and 844.

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

JUL 25, 1984

at 8 o'clock and 15 min.

WALTER A.Y.H. CHINN, CLERK

and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the person or premises above described and the grounds for application for issuance of the search warrant exist as stated in the supporting affidavit(s).

YOU ARE HEREBY COMMANDED to search on or before August 4, 1984 (not to exceed 10 days) the person or place named above for the property specified, serving this warrant and making the search (in the daytime—6:00 A.M. to 10:00 P.M.) and if the property be found there to seize it, leaving a copy of this warrant and receipt for the property taken, and prepare a written inventory of the property seized and promptly return this warrant to U.S. Magistrate as required by law.

Name of Affiant

John D. McCarthy

Signature of Judge or US Magistrate

Joseph M. Gedan

Date/Time issued

7-25-84 8:15 p.m.

*If a search is to be authorized "at any time in the day or night" pursuant to Federal Rules of Criminal Procedure Rule 41(c), show reasonable cause therefor.

AFFIDAVIT FOR SEARCH WARRANT

UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

Docket No. 84-0246MG

UNITED STATES OF AMERICA

v.

ONE BROWN SHOULDER BAG WITH BLACK POCKETS ON EACH END, INITIALS "BDH", MEASURING 14" × 12½" × 8"

Name and address of Judge or U.S. Magistrate

Hon. Joseph M. Gedan

U.S. Courthouse

300 Ala Moana Blvd.

Honolulu, Hawaii 96850

The undersigned being duly sworn deposes and says: That there is reason to believe that on the premises known as Hawaii

one brown shoulder bag with black pockets on each end and black carrying strap, with the initials "BDH" engraved in gold on the bag, measuring 14" × 12½" × 8"

[Form printed line illegible]

controlled substances held in violation of Title 21, United States Code, Sections 841(a)(1) and 844.

Affiant alleges the following grounds for search and seizure²

See attached affidavit which is incorporated as part of this affidavit for search warrant

Affiant states the following facts establishing the ongoing grounds for issuance of a Search Warrant

see attached affidavit

Signature of Affiant

John D. McCarthy

Official Title, if any

Task Force Agent

Date

July 25, 1984

Judge or US Magistrate

Joseph M. Gedan

¹United States Judge or Judge of a State Court of Record.

²If a search is to be authorized "at any time in the day or night" pursuant to Federal Rules of Criminal Procedure 41(c), show reasonable cause therefor.

AFFIDAVIT OF JOHN McCARTHY

JOHN McCARTHY, being duly sworn under oath deposes and says:

1. I am an officer with the Honolulu Police Department, have been so employed for eight years, have been assigned to the Airport Task Force at the Honolulu International Airport since 1983, and am experienced in the enforcement of state and federal drug laws.

2. On July 22, 1984, I received the following information from John Birt, a United Airlines Ticket Agent at the Honolulu International Airport:

a. On July 22, 1984, Birt sold two roundtrip tickets on United Airlines to Miami, Florida via Chicago, Illinois, departure being on July 22, 1984, with an open return.

b. The tickets were sold to a male identifying himself as "Andrew Kray," in the names of "Andrew Kray" and "Janet Norian"; with the male paying for the \$2100 worth of tickets with a stack of twenty-dollar bills from which Birt took \$2100 and noted that the amount left was approximately equal to the amount taken.

c. The individual furnished Birt with a callback phone number of (808) 926-3481.

d. Birt described the individual as caucasian male, approximately 25 years old, small build, 5'6", 130 pounds, wearing black clothing and a large amount of gold jewelry.

e. The individual was with a caucasian female, tall, thin, wearing a red blouse and blue slacks.

3. Hawaiian Telephone records indicate that (808) 926-3481 is subscribed to by Karl Herman of 348-A Royal Hawaiian Avenue, Honolulu, Hawaii.

4. On July 24, 1981, Birt listened to the recorded message I received after dialing (808) 926-3481 and identified the voice as being that of the same male individual

that bought the airline ticket in the name of "Andrew Kray."

5. According to United Airlines records I received on July 24, 1981, two reservations from Miami to Honolulu were made, with arrival in Honolulu on Flight 5, United Airlines on July 25, 1981, in the names of "Andrew Kray" and "Janet Norian."

6. Special Agent Mary Turner of the Drug Enforcement Administration, Los Angeles, informed me on July 25, 1984, that she had seen two individuals fitting the descriptions of the two persons flying under the names of "Kray" and "Norian" board United Airlines Flight 5 in Los Angeles to Honolulu on July 25, 1984, with the male wearing a black jump suit and a large amount of gold jewelry; the female was not dressed as previously described.

7. I was informed by Special Agent Richard Kempshall of the Drug Enforcement Administration at approximately 7:00 p.m. on July 25, 1984, that he observed two persons fitting the descriptions of the two individuals travelling under the names of "Kray" and "Norian" deplane from United Airlines Flight 5 at Honolulu International Airport, with the male carrying two pieces of carryon luggage as was the female. Kempshall further informed me that:

a. He approached the couple as they were in the roadway outside the baggage claim area on the ground floor at the Airport at approximately 6:41 p.m.

b. The male stated he had no identification, was not in possession of his airline ticket, flew to Miami using his mother's maiden name of "Kray," and had not made the reservations for the flight himself.

c. The couple and their carryon luggage were taken to the Drug Enforcement Administration Airport office where the luggage was turned over to United States Customs Service Dog Handler Jerry Tomaino for examination by narcotics detector dog "Donker."

d. At approximately 6:54 p.m., Tomaino informed Kempshall that Donker had examined all four pieces of carryon luggage and had alerted to one of the pieces carried by the male, indicating the presence of controlled substances in that piece of luggage, and had not alerted to the other three.

e. The piece of luggage alerted to is a brown shoulder bag with black pockets on each end and black carrying strap, with the initials "BDH" engraved in gold on the bag, which measures approximately 14" x 12½" x 8".

8. Tomaino has previously informed me that Donker, serial number C-166, is a certified United States Customs Service narcotic detector dog trained to identify the presence of controlled substances, and Donker has correctly identified the presence of controlled substances on hundreds of prior occasions and has proven to be a reliable narcotics detector dog.

9. Based on the above, I am informed and believe that there is probable cause to believe that there are controlled substances held in violation of Title 21, United States Code, Sections 841(a)(1) and 844 in the bag described in paragraph 7e, above.

Further affiant sayeth naught.

/s/ JOHN D. MCCARTHY
JOHN D. MCCARTHY

Subscribed and sworn to before me
this 25th day of July, 1984.

JOSEPH M. GEDAN
UNITED STATES MAGISTRATE

IN THE UNITED STATES DISTRICT COURT
FOR THE STATE OF HAWAII

ROBERT P. GOLDBERG #1915

CR. NO. 84-02200

UNITED STATES OF AMERICA, PLAINTIFF

vs.

ANDREW SOKOLOW, DEFENDANT

STIPULATED FACTS

Comes now plaintiff United States of America and defendant Andrew Sokolow through their respective counsel to stipulate to the following facts with respect to the defendant's motion to suppress:

On July 22, 1984, Honolulu Police Department and Airport Task Force Officer John McCarthy received information from a United Airlines ticket agent named John Birt indicating on that date Birt sold two round trip tickets in the names of Andrew Kray and Janet Norian from Honolulu to Miami, Florida, departing on July 22, and with an open return. The tickets were paid for in cash by the individual identifying himself as Andrew Kray, with Kray giving Birt a stack of \$20 bills from which Birt took \$2,100 and returned the remainder to Kray.

These facts were reported to the Drug Enforcement Administration who upon calling the telephone number given by Sokolow determined that said number was subscribed to a Karl Herman at 348-A Royal Hawaiian Avenue,

Honolulu, Hawaii. Said address in fact being the residence of Andrew Sokolow and Karl Herman.

On July 24, 1984, Agent McCarthy learned that return reservations from Miami to Honolulu had been made in the names of Andrew Kray and Janet Norian, with arrival in Honolulu on July 25, 1984. Drug Enforcement agents in the city of Los Angeles, California, confirmed that Kray and Norian were aboard the flight to Honolulu.

At approximately 6:27 p.m. on July 25, 1984, Andrew Kray and Janet Norian were observed arriving at the Honolulu Airport with four carry-on bags. Kray and Norian proceeded directly to the street level and attempted to look for a taxi.

Agent Richard Kempshall approached the couple as they were in the roadway outside the baggage claim area on the ground floor at the Airport at approximately 6:41 p.m.

Kray stated that he had no identification, was not in possession of his airline ticket, flew to Miami using his mother's maiden name of "Kray" and had not made the reservations for the flight himself.

The couple and their carryon luggage were taken to the Drug Enforcement Administration Airport office where the luggage was turned over to the United States Customs Service Dog Handler Jerry Tomaino for examination by narcotics detector dog "Donker".

At approximately 6:54 p.m. on July 25, 1984, the luggage was examined by narcotics detector dog Donker. Donker alerted to a brown shoulder bag with black pockets, indication [sic] the presence of narcotics therein.

Based on this information, narcotics agents arrested Sokolow (Kray) and obtained a federal search warrant for the brown shoulder bag. The affidavit in support of the search warrant included the information that Donker was

a certified U.S. Customs Service narcotic detector dog trained to identify the presence of controlled substances, and had done so previously and proven to be reliable in that capacity. The bag was searched pursuant to the warrant at approximately 8:55 p.m. on July 25, 1984, and did not appear to contain any narcotics. The brown shoulder bag did contain two different used airline tickets in the names of Andrew Kray and James Wodehouse from Honolulu to Miami and back, as well as Miami hotel receipts corresponding to the travel dates on the used airline tickets.

Pending issuance and execution of the search warrant, Sokolow was advised of his constitutional rights and declined to make any statements to the narcotics agents. However, Sokolow was also overheard making a statement on telephone that he was in big trouble.

Approximately a half hour after opening up the parties' brown bag the agents informed Janet Norian that she could go but continued to hold Sokolow. The baggage that Janet Norian was carrying was not returned.

After the apparent unsuccessful search of the brown shoulder bag, narcotics detector dog Donker reexamined the other three pieces of luggage, at 9:30 p.m. and alerted to a medium sized Louis Vuitton carry-on bag, indicating the presence of a controlled substance inside. Narcotics agents attempted to obtain a second search warrant at that time, but were unable to do so until after the luggage had been examined at 7:45 a.m. the next morning by a second U.S. Customs narcotics detector dog Lady, who, under a different handler, alerted to the same medium sized Louis Vuitton bag. This resulted in the issuance and execution of a second federal search warrant which in turn resulted in the seizure of a total of approximately 1,000 grams of cocaine.

Sokolow had been released the night before. Sokolow asked for his luggage and why they were letting him leave when earlier they said he was going to go to jail for a long time. They stated they could not get another search warrant until the next day since it was getting so late and they would have to get a warrant in the morning.

Based largely upon the above information, a third federal search warrant was obtained for a safety deposit box at the Waikiki branch of the Bank of Hawaii, a search of which produced, *inter alia*, \$1,500 in twenty dollar bills.

This stipulation is intended to supplement and not contradict evidence presented in court at the hearing on this matter and affidavits submitted by the plaintiff at the hearing.

DATED: November 1, 1984, at Honolulu, Hawaii.

/s/ ROBERT P. GOLDBERG

ROBERT P. GOLDBERG

Attorney for Defendant

Andrew Sokolow

DANIEL A. BENT

United States Attorney

District of Hawaii

By /s/ MICHAEL A. SANTOKI

MICHAEL A. SANTOKI

Assistant United States Attorney

Attorneys for Plaintiff

UNITED STATES OF AMERICA

APPROVED AND SO ORDERED:

BERT S. TOKAIRIN

UNITED STATES MAGISTRATE

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF HAWAII

CRIMINAL NO. 84-2200

UNITED STATES OF AMERICA, PLAINTIFF

vs

ANDREW SOKOLOW, DEFENDANT

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for hearing on Monday, October 29, 1984, at 10:30 A.M., at Honolulu, Hawaii,

BEFORE:

HONORABLE BERT S. TOKAIRIN, U.S. Magistrate.

Appearances:

MICHAEL SANTOKI, ESQ.

Assistant U.S. Attorney
Room C-242, U.S. Courthouse
300 Ala Moana Boulevard
Honolulu, Hawaii

Appearing for
the Plaintiff;

ROBERT P. GOLDBERG, ESQ.

130 Merchant Street
Suit 2020
Honolulu, Hawaii

Appearing for
the Defendant.

* * *

THE WITNESS: Janet Norian, N-o-r-i-a-n.

DIRECT EXAMINATION

BY MR. GOLDBERG:

Q Janet, back in July, July 22, 1984, did you take a vacation to Miami, Florida?

A Yes.

Q Who did you go with?

A Andrew Sokolow.

Q Do you see him in the courtroom?

A Yes.

Q Point to him, please.

(Witness pointed to the defendant)

[3] MR. GOLDBERG: May the record reflect the witness has identified the defendant Sokolow?

THE COURT: Yes. The record will so show.

Q On July 22nd, what occurred on that day? You went to the airport?

A Yes; we went to the airport together.

Q And how many pieces of baggage did you have with you?

A I had one bag and a shoulder bag.

Q And what did he have with him?

A One bag and a shoulder bag?

Q And did you check any luggage in at the airport?

A No, we didn't.

Q And then you flew to Miami, is that correct?

A That's right.

Q Now, at the time, you were living with Andrew Sokolow, is that correct?

A Yes.

Q And that's at 348-A Royal Hawaiian Avenue?

A Yes.

Q Did he have any other roommates there?

A Yes, he had one.

Q What's his roommate's name?

A Karl Herman.

Q Is Karl Herman still his roommate?

A Yes.

[4] Q What's his telephone number there where you and Mr. Sokolow were residing?

A I can't remember.

MR. SANTOKI: That's part of what we will stipulate to.

MR. GOLDBERG: Thank you.

MR. SANTOKI: If that will help.

THE COURT: What is the number?

MR. GOLDBERG: The telephone number is stated in the affidavit of the DEA agent. It's 926-3481, which as stated in the affidavit attached to the search warrant is in the name of a Karl Herman at said address, that being the telephone number that Mr. Sokolow had given to the airlines as confirmation.

Q Okay. Now, on July 22nd, you and Andrew Sokolow returned to Honolulu, is that correct?

A Yes.

Q You left Miami.

A Yes.

Q And where did you fly to?

A Denver first.

Q How long were you in Denver?

A For about an hour.

Q And then from Denver where did you fly to?

A To Los Angeles.

[5] Q What airlines was that on?

A I can't remember.

Q Okay. Now, when you landed in Los Angeles, what

did you do when you got off the airplane? Had you checked in any baggage?

A Yes. I checked what I was carrying.

Q Okay. You didn't give any bags to the airlines.

A No.

Q You kept it with you.

A Yes.

Q And Andy kept his bags with him also?

A Yes.

Q And then you flew from Denver to Los Angeles?

A Yes.

Q Okay. And, when you got off the plane in Los Angeles, what did you do?

A We got off the flight and changed different flights.

Q So, when you got off the first flight. . .

A Yes.

Q . . . in Los Angeles, did you just sit there and wait for the next plane?

A We had to change terminals. We walked quite a ways to the next terminal.

Q Okay. And, when you got to the next terminal, what did you do?

[6] A We sat down for a little while, and then I got up and went to a shop for a drink and came back.

Q And what was Andy doing during this time, Mr. Sokolow?

A He was lying on the lounge, relaxing.

Q He was lying down on the chairs?

A Yes. It was a lounge type chair. You can sit like two or three people.

Q So he was lying across three different chairs then.

A No. It was one lounge.

Q One couch.

A Yes, one couch.

Q And how long did you have to wait for the next plane to leave?

A About an hour.

Q During this one-hour period, what did you do?

A I sat down next to Andy and picked up a magazine and read my magazine.

Q What magazine were you reading, do you remember?

A No, I can't remember.

Q Was it a magazine that was there already?

A No. It was one that I had before, that I had carried on the flight.

Q Do you remember where you got that magazine?

A No.

Q Did you have it with you in Miami?

[7] A I can't remember.

Q And, as you were reading your magazine, what did you do? Did you get up and do anything else?

A No, I didn't. I just sat there and waited.

Q And how long did you wait?

A For about half an hour, maybe longer.

Q Okay. And then what happened. What did Andy do during this one-half hour?

A He was right next to me. He was reading a magazine and waiting for the plane.

Q Okay. And then what happened next?

A They called us and we boarded. We both got on the flight together.

Q Did they call you individually by name?

A No. They called by numbers.

Q And they called your number?

A Yes, and we got on the flight.

Q And did you have all of your baggage with you?

A Yes.

Q And when you got on the flight. . . . When you were flying this time, were you flying third class or first class?

A First class.

Q How did you manage to be flying first class?

A Andy bought the tickets.

Q So you don't know how you ended up being in first class.

[8] A No, I don't.

Q Now, when you got on the plane, then the plane flew to Honolulu?

A That's right.

Q Now, what happened when the plane landed in Honolulu?

A We both got off the flight and we walked to the taxi ramp.

Q Did anything unusual happen between the time you got off the plane and when you walked over to where the taxis were?

A Not between that time.

Q What happened as you walked to the taxi?

A Andy was approached by somebody.

Q What did you observe?

A That he was grabbed on the arm.

Q Okay. And then what happened? What happened next? When you saw him grabbed by the arm, what did you do?

A I kept still walking towards him.

Q And then what happened?

A Then I was being grabbed by a woman on the arm.

Q When she grabbed you, what did she say? What happened when she grabbed you?

A She introduced herself.

Q What did she say her name was?

A Karen. I can't remember her last name, but she was a [9] federal police, and she asked me: We would like to talk to you.

Q What did she tell you then?

A I put my bag down and she said pick up your bag and come this way.

Q Now, did she tell you that you were not under arrest?

A She didn't say.

Q Did you feel you had the right to leave?

A No.

Q She just told you to pick up your bag and come with her, is that correct?

A That's right.

Q Okay. And was she still holding your arm?

* * *

THE WITNESS: Andrew Sokolow, S-o-k-o-l-o-w.

DIRECT EXAMINATION

BY MR. GOLDBERG:

Q Mr. Sokolow, directing your attention to July 22nd, 1984, first of all, where do you reside? What is your address?

A 348-A Royal Hawaiian Avenue.

Q Were you residing there on July 22nd, 1984?

A Yes.

Q And was Janet Norian residing with you?

A Yes.

Q Anyone else residing with you at that address?

A Karl Herman.

Q What is the telephone number there?

A 926-3481.

Q And whose name is that telephone number under?

A Karl Herman's name.

Q And how long have you resided with Mr. Herman?

[11] A Approximately six months or seven months.

Q And on July 22nd, you went to Miami, is that correct?

A Yes.

Q And you purchased your airline ticket at the airport?

A Yes, I did.

Q And you purchased two round-trip tickets.

A Yes, I did.

Q And you paid twenty-one hundred dollars in cash for them, is that correct?

A I believe so.

Q And then you went to Miami?

A Yes, I did.

Q And you stayed with some friends in Miami.

A Yes.

Q And then you boarded a flight returning to Honolulu on July 25th, 1984?

A Yes.

Q And, when you boarded these flights, did you have any check-in luggage, either you or Janet Norian?

A No, we didn't.

Q So you flew from there to Denver.

A Yes.

Q And then to Los Angeles.

A Yes.

Q Now, when your airline landed in Los Angeles, what, if [12] anything, did you do?

A We deplaned. When I got off the plane, I looked at the departure schedule to make sure what gate we had to be at and what time we would be boarding or departing; and, after I did that, I don't remember if I had to walk very far to a different gate or not, but I got to the gate

where we had to be and I put our things down and I sat down and took off my shoes and relaxed. I took out a magazine and started to read it.

After a few minutes, Janet left everything with me and went to the store and came back a little while later with something to drink for her and a couple of candy bars. I was lying down and relaxing, and I had my magazine out. When she got back, I just kind of sat up and read my magazine. Nothing special other than that.

Q Were you walking around?

A No.

Q Were you or her looking around?

A I, you know, being the fact that I was reading most of the time, I don't remember exactly what she was doing. I was reading and I guess I looked up and I probably noticed a few pretty girls. Nothing more than that.

Q Okay. And what happened next?

A A little while later we got back on the plane to go to Honolulu. I just got on the plane and we got to our seats [13] and put our baggage appropriately away and sat down.

Q Were you flying first class?

A Yes.

Q How was it that you were flying first class?

A I asked for coach ticket, and, when we finally got on the flight, there was nothing but first class.

Q Is this on the flight going to Miami or back?

A Coming back.

Q And how did you fly to Miami? Did you fly first class or coach?

A I believe we flew coach. I'm not a hundred percent sure.

Q When you left Miami on your first flight, did they put you on coach or first class?

A They put us in first class. The entire route back, they only had availability of first class.

Q Did you have to pay extra for that?

A I believe we did.

Q Where did you pay that extra fare? Did you pay for it at Miami or Honolulu?

A In Miami.

Q You paid additional funds at Miami to go first class.

A Yes.

Q And then, when you landed in Honolulu, what, if anything occurred?

A When we landed, we got off the plane and walked from the [14] gate to the main terminal area instead of waiting for the bus, and we walked directly there; and, because we had no baggage checked in, we got to the main terminal and walked directly down the escalator towards the street and did not go into the baggage claim area.

Q All right.

A When we got to the street, I walked directly to one of the cab dispatchers and asked him for a cab. I walked—there were a couple of parked cars—I walked behind one of them to get out on the street, and, as the cab was pulling up, I got grabbed on my left arm.

Q What happened? As best as you can recollect, describe to the Court what occurred then. Were you grabbed lightly?

A I wasn't knocked over, but I would have to pull my arm away to get out.

Q What happened after you were grabbed there on the street?

A I looked up to see who was grabbing me.

Q What did you notice when you looked up?

A I kind of noticed vaguely that there was somebody right close to me on my right, but I was looking more

toward the left and I noticed that there was a guy grabbing my arm. The guy who grabbed my arm was right there, and I noticed that someone said this is the guy, and the cabbie waved the cab off, the cab dispatcher, and I was kind of let's say definitely guided back on to the sidewalk. I wasn't dragged. I didn't [15] go off on my own volition.

Q You didn't go on your own volition.

A No.

Q Were you pulled? Was there tugging on your arm?

A Like I said, I wasn't dragged off my feet, but I was definitely moved over there.

Q And then they moved you back on the sidewalk, is that what they did?

A Yes.

Q What, if anything, happened then?

A I noticed there was a bunch more guys and I think one lady that kind of surrounded me and I heard someone say like grab her, too, and they kind of surrounded me, and Janet was a few feet away from me and we were both pretty much surrounded.

Q What occurred then?

A They asked me what my name was. They said, either as they were walking up the sidewalk or right when we got there, they were DEA officers, and they were going to ask me some questions. They asked me my name and what name I travelled under and they asked my why I was travelling under my. . . . My ticket had a different name on it. I asked them what was going on. And they said what's going on is that we believe that you went down to Miami to pick up some "toot" and we're going to put some dogs on your luggage, and if they respond to your luggage, I would be placed under arrest.

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF HAWAII

CRIMINAL NO. 84-02200

UNITED STATES OF AMERICA, PLAINTIFF,

vs

ANDREW SOKOLOW, DEFENDANT.

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for hearing on Friday,
November 2, 1984, at 2:10 P.M., at Honolulu, Hawaii,

BEFORE:

HONORABLE BERT S. TOKAIRIN, U.S. Magistrate.

APPEARANCES:

MICHAEL SANTOKI, ESQ.

Assistant U.S. Attorney
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Honolulu, Hawaii

Appearing for
the Plaintiff;

ROBERT P. GOLDBERG, ESQ.

130 Merchant Street
Suit 2020
Honolulu, Hawaii

Appearing for
the Defendant.

* * *

THE WITNESS: Sure. John D. McCarthy. My last name is M-c C-a-r-t-h-y.

DIRECT EXAMINATION

BY MR. SANTOKI:

Q Sir, how are you employed?

A I'm employed as a Honolulu police officer assigned to the Drug Enforcement Task Force.

Q And you were one of the officers that worked in Mr. Sokolow's case, is that right?

[3] A Yes.

Q In the stipulated facts, these facts are included: Mr. Sokolow and Janet Norian were taken from the sidewalk area back into the building at the airport. . .

A Correct.

Q . . . where a dog examination was performed. My one question to you is: Why were they taken from the sidewalk area back inside the building?

A The main reason being that the dog is not allowed to be run on luggage in a public open area.

* * *

**UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII**

Case No. CR 84-02200

UNITED STATES OF AMERICA, PLAINTIFF

v.

ANDREW SOKOLOW, DEFENDANT.

Honolulu, Hawaii
September 22, 1986
2:06 P.M.

Hearing Responding to Order of 9th Circuit

Before SAMUEL P. KING
District Judge

APPEARANCES:

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* * *

THE WITNESS: John D. McCarthy, last name is
spelled M-c-C-a-r-t-h-y.

DIRECT EXAMINATION

BY MR. SANTOKI:

Q Would you tell us how you're employed please, sir?

A I'm employed by the Honolulu Police Department
and assigned to the Drug Enforcement Administration.

THE COURT: Anyplace where you can get to a mic.

BY MR. SANTOKI:

Q How long have you been with the police department, sir?

A Approximately ten and a half years now.

Q How long have you been assigned to the Drug Enforcement Administration?

[5] A Since February of 1982.

Q Very briefly, sir, have you received any training in the investigation of narcotics offenses?

A Yes, sir, I have.

Q What kind of training?

A I've gone through classes conducted by the Honolulu Police Department and the Drug Enforcement Administration, as well as on the job training with senior agents.

Q During the course of your experience in law enforcement, sir, have you participated in investigations related to narcotics offenses?

A Yes, sir, numerous.

Q On approximately how many occasions?

A I would say at least in excess of 300 or more occasions.

Q Did any of those involve cocaine?

A Yes, sir.

Q Did any of those involve investigations which took place at the Honolulu Airport?

A Yes, sir.

Q How many of your investigations involved cocaine?

A I would say approximately two-thirds or more.

Q And how many of those took place at the Honolulu Airport?

A The majority, almost the entire amount of those cases [6] took place at the airport.

THE COURT: That's where you hang out?

THE WITNESS: Yes, sir.

THE COURT: Did you testify before in this hearing before Judge Tokairin?

THE WITNESS: Yes, sir, I believe so.

THE COURT: So this is different information you're coming out with now?

MR. SANTOKI: I believe that —

THE COURT: I have the transcript of what went on in front of Judge —

MR. SANTOKI: I believe the bulk of what the witness is about to testify to, he did not testify to directly in front of the Magistrate.

THE COURT: I was just trying to have you help me keep it within bounds. Go ahead.

MR. SANTOKI: Certainly.

BY MR. SANTOKI:

Q In the course of your duties as —

MR. GOLDBERG: Just for the record, we — for purposes of this hearing, we are allowing the testimony both to include the testimony that has already been given, and that which goes beyond —

THE COURT: Yes, all testimony previously given is already before me.

[7] MR. GOLDBERG: Okay, but additional new testimony is also being allowed?

THE COURT: Right. And the record may also know that you object to this if — taking any more testimony if you want. You may get to the Supreme Court on that issue.

MR. GOLDBERG: I will make the objection, Your Honor. It does kind of give him two shots at the —

THE COURT: Yes, I mean, it's a possible interpretation of the order that I'm just supposed to make up my mind without any evidence. Go ahead.

BY MR. SANTOKI:

Q In the course of your duties, sir, have you discussed with other law enforcement officers the manner in which cocaine is brought into the District of Hawaii and distributed here?

A Yes, sir.

Q Have you spoken with cocaine users and cocaine dealers also about the manner in which cocaine is brought in and used and distributed?

A Yes, sir.

THE COURT: Did he testify as an expert below?

MR. SANTOKI: No.

THE COURT: Oh.

[8] BY MR. SANTOKI:

Q In the course of your duties, sir, were you stationed at the Honolulu International Airport to investigate narcotics offenses?

A Yes, sir.

Q From when to when?

A From February 1982 until June of last year, 1985.

Q What was your primary responsibility while you were stationed at the airport?

A To investigate narcotics trafficking into and out of the State of Hawaii, primarily at the Honolulu Airport.

Q Was it any part of your duties while you were stationed at the airport to recognize and to make contact with persons who were suspected of being drug couriers?

A Yes, sir.

Q And did you receive any training or information from other officers, or from drug couriers that assisted you in doing so?

A Yes, sir.

Q What was that?

A I received training as well as speaking to the prior defendants or drug couriers that also provided me with information on the subject.

Q As a result of that information, did you develop some expertise in the area of attempting to recognize persons who [9] were transporting narcotics through the airport?

A Yes, sir.

MR. GOLDBERG: Your Honor, I'm going to object at this time. Number one, looking through the prior testimony reports, I can't see how this individual — how

Officer McCarthy, whether or not he was an expert, if there is such a thing in drug detection, whether that type of foundation is necessary for the testimony that's to be given, other than his forming an opinion as to whether the facts on an affidavit are sufficient to warrant the warrant.

THE COURT: Well, he hasn't said so yet, but I assume somewhere along the line, you're going to offer him as an expert on something, and when you got to that point, why you can—up again, and when you do get to that point, stop and let him have a chance, or are you at that point?

MR. SANTOKI: That's fine, Your Honor. We're giving the officer's background, and we will give the other officer's background simply—

THE COURT: I understand that, but are you offering him as an expert? Is he going to testify as to an expert opinion as to profiles and stuff like that?

MR. SANTOKI: He is going to testify to an opinion, and I think his background is relevant to his opinion.

[10] THE COURT: And the—well, if he's going to testify to an opinion, then you're offering him as an expert, right? Only experts can express opinions.

MR. SANTOKI: I don't know that expert testimony is required, but we'll—certainly, we'll stop at that point.

THE COURT: Well, you dig around all you want to, and then if you say he can render an opinion without being an expert, why, then we'll have that one go up to the 9th Circuit.

BY MR. SANTOKI:

Q Officer McCarthy, on July 22, 1984, were you employed by the Honolulu Police Department and assigned to the DEA Airport Task Force?

A Yes, sir, I was.

* * *

Q Agent McCarthy, on July 22, 1984, did you receive information from a United Airline ticket agent named John Birt that Birt had just sold two round-trip tickets to a person who identified himself as Andrew Kray, K-r-a-y, for Kray and his female companion to travel from Honolulu to Miami, Florida?

A Yes, sir, I did.

Q Is Miami a known source city for drugs, to your knowledge?

A Yes, sir.

Q And that round trip was to commence on July 22, 1984, with an open return, is that correct, sir?

A Yes, sir.

MR. GOLDBERG: Your Honor, at this—I'm sorry it's a little late, but I'm going to object to the question and the answer whether Miami is or is not known as a known source city.

THE COURT: Well, he asked him for his opinion, [17] and he said yes. You can cross examine him. Go ahead.

BY MR. SANTOKI:

Q Is it also your understanding that Kray paid for the tickets by giving the ticket agent a large stack of \$20 bills from which the ticket agent took \$2,100, the price of the tickets, did the ticket agent also tell you that the amount of cash that was returned was approximately equal to the amount of cash that he had taken from the roll?

A Yes, sir.

Q Did the ticket agent describe the person who identified himself as Andrew Kray to you?

A Yes, sir, he did.

Q Was that description of a person being approximately 25 years old, wearing black clothing, and a large amount of gold jewelry?

A Yes, sir.

MR. GOLDBERG: Your Honor, I'm going to object at this time on the basis of this questioning is hearsay testimony.

THE COURT: Yeah, he's just saying this is what the guy told him.

MR. GOLDBERG: And it will be—

THE COURT: That's why I'm letting him read it, because all he's reading is what this guy said.

MR. GOLDBERG: But that individual is not subject [18] to cross examination.

THE COURT: Yeah, but that's not the issue here. The issue is whether he got this information from somebody.

MR. GOLDBERG: Very good, Your Honor.

THE COURT: Go ahead, not whether it's true, but whether he got it from him. Go ahead.

BY MR. SANTOKI:

Q Did the ticket agent tell you that the person who identified himself as Kray appeared nervous when buying the tickets?

A Yes, sir.

Q Did the ticket agent give you a call back number that was given to the ticket agent by the person buying the tickets?

A Yes, sir.

Q Did you run that number?

A Yes, sir, I did.

Q Did it turn out to be listed to a Karl K. Herman, H-e-r-m-a-n at 348-A Royal Hawaiian Avenue, Honolulu, Hawaii?

A Yes, sir.

Q Did you phone that number on July 24, 1984 with the ticket agent?

A Yes, sir.

THE COURT: July 24?

MR SANTOKI: July 24.

BY MR. SANTOKI:

Q Was it July 24?

A Yes, sir.

Q Was there a recording that answered the telephone?

A Yes, sir.

Q Did the ticket agent listen to the voice on the recording?

A Yes, sir, he did.

Q And did the ticket agent identify for you that voice as being the same voice as that of the person that bought the tickets from him?

A Yes, sir, he did.

Q On the same day, July 24, did you learn from the same ticket agent that return reservations had been made in Miami—from Miami to Honolulu?

A Yes, sir.

Q And the return flight was to be the next day, July 25?

A Yes, sir.

Q And the return reservations were made in the same name, that is to say, Andrew Kray?

A Yes, sir.

Q Did you have communications on July 25, 1984, with DEA agents in Los Angeles—

A Yes.

[20] Q —confirming that Kray and his female companion were aboard the flight to Honolulu?

A Yes, sir, I did.

Q Did the agents in Los Angeles tell you that Kray was wearing a black jumpsuit and a large amount of gold jewelry?

A Yes, sir.

Q Did the agents in Los Angeles tell you that during the stopover in Los Angeles, Kray appeared to be very nervous and was looking all around the waiting area?

A Yes, sir.

Q Did you then arrange for someone to meet the airplane and conduct surveillance on Kray at the Honolulu International Airport?

A Yes, sir, I did.

Q Did you do this yourself?

A No, sir, I didn't.

Q Who did that?

A Special agents Dick Kempshall, William Schnepfer and task force agent Karen Huston.

Q Did you provide Agent Kempshall in particular with all of the information that you've just given us here today?

A Yes, sir, I did.

THE COURT: All the information you had gotten from the ticket agent and the Los Angeles —

THE WITNESS: Yes, sir.

[21] THE COURT: DEA was it, or police?

THE WITNESS: DEA.

MR. SANTOKI: Thank you, I have nothing further.

CROSS EXAMINATION

BY MR. GOLDBERG:

Q Officer McCarthy, you were with Mr. Birt when he dialed the telephone number that was given by Mr. Kray when he purchased his tickets, were you not?

A I was with him, yes.

Q And you were with Mr. Birt when he — I'm sorry, you were with Mr. Birt when he called Mr. Kray's home telephone number?

A I believe I dialed the number and allowed Mr. Birt to listen.

Q And he recognized the voice as that of Mr. Kray, the individual that had purchased the tickets, did he not?

A He told me that was the same person that had purchased the tickets.

Q Okay. So nothing unusual about that, was there?

A No, not that I know of.

Q In determining a profile, did you take into consideration how an individual dresses?

A Yes, sir.

Q So how an individual chooses to dress may determine whether he may or may not be arrested or stopped at the [22] airport, is that correct?

A It may be a factor, yes.

Q At the time you spoke to Mr. Kempshall, you knew that an individual named Kray had paid cash for a ticket, is that correct?

A That's correct.

Q And you knew that he went to Miami, and he was coming back after a short period of time, is that correct?

A Yes, sir.

Q And you knew that the telephone number he had given the agent when he purchased the ticket was, in fact, his telephone number, at least his voice appeared on the phone, on the answer phone.

A It appeared to be the same person, yes.

Q And he had traveled this — taken this trip also with a companion, is that true?

A A female companion, yes, sir.

Q Okay. Did you take this into consideration in determining the profile?

A Yes, sir.

Q That he was with a female companion?

A Yes, sir.

Q At the time you talked to Agent Kempshall, was there any other factors that you were considering?

A Besides the ticket purchase, the address? The fact [23] that I could not prove or disprove that there was an Andrew Kray in Hawaii is another factor that was considered. That's all that I can think of right now.

THE COURT: Short trip?

THE WITNESS: Short trip, yes, sir.

THE COURT: Did you try to find out if there was anyone named Kray, K-r-a-y?

THE WITNESS: Yes, sir, I made a — I could not find no one by that name.

BY MR. GOLDBERG:

Q Okay, Officer McCarthy, you live in Hawaii, do you not?

A Yes, sir.

Q You've lived here for your whole life?

A Yes, sir.

Q Is it unusual in Hawaii for roommates to share houses, apartments?

A No, sir, not at all.

Q And under those circumstances, would more than one name be listed in the directory?

A Very rarely.

Q So normally, if Mr. Kray had a roommate — in this case, did you know who that telephone number was listed to, in fact?

A Yes, sir, it was subscribed to by Karl Herman.

[24] Q And where did Karl Herman live?

A 348-A Royal Hawaiian Avenue.

Q Okay. In fact, Mr. Herman was the alleged Mr. Kray's roommate, was he not?

MR. SANTOKI: I object to that, Your Honor.

THE COURT: Why? Excuse me — overruled.

MR. SANTOKI: There's no foundation as to whether or not — there's no personal knowledge at the time in question.

THE COURT: Oh, well, he can say — go ahead, you can answer it if you know.

THE WITNESS: I'm sorry, I forgot the question.

BY MR. GOLDBERG:

Q You found out that the telephone number at that address was listed to a Karl Herman?

A That's correct.

Q Okay. Did you further discover that Mr. Herman in fact lived at that address?

A Not until —

MR. SANTOKI: Again I'll —

THE COURT: He can answer the question, he's a police officer.

MR. SANTOKI: Sure, but it's —

THE COURT: But not at that time, is that right?

THE WITNESS: That's correct.

[25] THE COURT: All right, next question.

BY MR. GOLDBERG:

Q Did later you find that Mr. Karl Herman lived at that address?

MR. SANTOKI: Same objection, Your Honor, it's irrelevant if he found out at some other time.

THE COURT: Overruled.

THE WITNESS: Yes, sir.

BY MR. GOLDBERG:

Q And you also found that the alleged Mr. Kray lived at that address?

A I found out that Mr. Sokolow lived at that address.

Q Okay. And in fact, Mr. Herman and Mr. Sokolow were roommates?

A Yes, sir.

* * *

THE WITNESS: Richard C. Kempshall, K-e-m-p-s-h-a-l-l.

DIRECT EXAMINATION

BY MR. SANTOKI:

Q Good afternoon.

A Good afternoon.

Q Would you tell us how you're employed please, sir?

A I'm a special agent with the Drug Enforcement Administration.

[27] Q How long have you been so employed?

A Approximately 15 years.

Q What are your responsibilities as a special agent with the Drug Enforcement Administration?

A To investigate violations of the Controlled Substances Act.

Q Have you received any specialized training which enables you to do so?

A Yes, I have.

Q What was that?

A Initial basic agent school training with the Department of Justice in Washington, and over the years, updated training on various facets of narcotics law enforcement.

Q In the course of your experience with the Drug Enforcement Administration, sir, have you participated in narcotics investigations?

A Yes.

Q Approximately how many?

A Several thousand, I would imagine.

Q Have any of those investigations involved cocaine?

A Yes.

Q Approximately what proportion?

A Probably 50 percent.

Q Have any of those investigations involved cocaine couriers coming through the Honolulu International Airport?

[28] A Yes.

Q About how many cases of that type?

A There's probably been 150, maybe 200 in the last seven years.

Q In the course of your duties with the Drug Enforcement Administration, sir, have you talked with other officers about the manner in which cocaine is transported and distributed?

A Yes.

Q Have you spoken with drug dealers about the manner in which cocaine is transported and distributed?

A Yes.

Q Have you spoken with drug couriers about the manner in which cocaine is transported and distributed?

A Yes.

Q Have you spoken with drug users as well about the same topics?

A Yes, I have.

Q Have you personally observed individuals who later turned out to be drug couriers while they were coming into the District of Hawaii through the Honolulu International Airport?

A Yes, I have.

Q On a few occasions or many occasions?

A Quite a number of occasions, more than a few, within [29] the last — since I've been at the airport since '79, I imagine we've — more than a few, quite a few in the last seven years.

Q How long have you been assigned to the airport detail of the Drug Enforcement Administration?

A Since 1979.

Q And are you still so assigned today?

A Yes, I am.

Q What is your primary responsibility as a part of that task force?

A Our responsibility is to try to intradict [*sic*] a movement of drugs through Honolulu International Airport, both incoming and outgoing.

Q And how do the drugs come in and go out through the airport?

A Any number of ways. They come in through foreign destinations, through U.S. Customs, they come by courier from the mainland, they come by small package express run by the airlines, they come by personal, private express companies, like Federal Express, they come through the customs mail branch, they come by boat, and they come by private plane.

Q Would it be fair to say that as a result of your training and experience in conversations with other officers and drug dealers, couriers and users, that you have developed [30] a background of information that might be a little bit more than the average citizen might have with respect to the manner in which cocaine is transported through the airport?

A Yes, that's true.

Q And have you also developed some information concerning typical characteristics of cocaine couriers?

A Yes, I have.

* * *

[33] Q Is it unheard of for a person who is carrying drugs to be traveling with someone?

A No.

Q Do people occasionally take other people with them to disguise their true purpose?

A Yes.

MR. GOLDBERG: I'm going to object to that question, Your Honor, I think it's a double opinion there.

[34] THE COURT: Well, I'll sustain the objection to it, and the answer may be stricken. Go ahead, Mr. Santoki.

BY MR. SANTOKI:

Q Has anyone ever told you that they traveled with a companion to disguise their true purpose?

A Yes.

Q Directing your attention, sir, to July 25, 1984, did you receive information from Agent John McCarthy about a person going under the name of Andrew Kray?

A Yes.

Q And was this a part of your duties as a DEA Airport Task Force Agent?

A Yes, it was.

Q Was that information that Agent McCarthy had been told on July 22, 1984, by a United Airlines Ticket agent named John Birt that Birt had just sold two round trip tickets to a person who identified himself as Andrew Kray, for Kray and his female companion to travel from Honolulu to Miami, Florida, a source city for drugs on July 22, 1984, with an open return, that Kray paid for the tickets in cash by giving the ticket agent a large stack of \$20 bills from which Birt took \$2,100 in cash, and noted that the amount left was approximately equal to the amount taken?

A Yes.

Q And did Agent McCarthy also tell you that the ticket [35] agent told him that Kray was approximately 25 years old, wearing black clothing and wearing a large amount of gold jewelry, and that Kray appeared nervous when purchasing the tickets?

A Yes, he did.

Q Did Agent McCarthy also indicate to you that when the telephone call back number given to Birt by Kray was dialed, Birt identified the voice on the telephone recording that answered the phone as being the same voice as that of the person that had bought the airline tickets under the name of Andrew Kray?

A Yes, I knew that.

Q And also did you know, and were you told that the telephone call back number that we've just discussed was listed under the name of Karl Herman at 348-A Royal Hawaiian Avenue, Honolulu, Hawaii?

A Yes, I knew that.

Q And were you also told that on July 24, 1984, reservations were made in Miami for the return trip to Honolulu from Miami in the names of Andrew Kray and his companion for the next day, July 25, 1984?

A Yes.

Q And did you also know that DEA agents in Los Angeles confirmed that Kray and his companion were aboard the flight to Honolulu, and that those same agents indicated Kray was [36] wearing a black jumpsuit and a large amount of gold jewelry, and that during a stopover in Los Angeles, Kray appeared to be very nervous and was looking all around the waiting area?

A Yes, I knew that.

Q At that point in time, did it become your responsibility to make some contact with the person going under the name of Andrew Kray when he arrived in Honolulu?

A Yes.

Q Did you do so?

A Yes, I did.

Q And that would have been at approximately 6:27 p.m. on July 25th, 1984?

A Yes.

Q Where did you make contact with the person going under the name of Andrew Kray?

A On the curbside, on the ground floor of the Honolulu International Airport facing the street.

Q Why did you make contact with him?

THE COURT: Just a second now, was he on the curb, or was he on the street, by the outside of a cab?

THE WITNESS: My best recollection, Your Honor, is that he was standing right on the curb.

THE COURT: All right.

BY MR. SANTOKI:

Q Why did you make contact with him?

[37] A We stopped him at that point to identify him and to try to determine whether he was, in fact, a drug courier from Miami.

THE COURT: Who's we?

THE WITNESS: Myself and Special Agent William Schnepfer.

THE COURT: Was there a woman there too?

THE WITNESS: Mr. Sokolow's traveling companion.

THE COURT: No, another woman?

THE WITNESS: Yes, there was—Officer Karen Huston was also present.

THE COURT: So how many all together and the officers, you—

THE WITNESS: Well, myself and Schnepfer stopped Sokolow, and he was separated from Janet Norian, the girl, by several feet, and Officer Huston, and another special agent, excuse me, I forget his name now, another special agent from Washington DO [sic], they talked to the girl separately.

THE COURT: There were four of you, and two—

THE WITNESS: Yes, myself, and Schnepfer and Karen and Desmond, Special Agent Desmond.

BY MR. SANTOKI:

Q Agent Kempshall, this is all being recorded, so I'd like to ask you to speak into the microphone when you answer the questions, if you would. There were a total of four [38] officers there?

A That's correct.

Q Were the officers in uniform or plain clothes?

A Plain clothes.

Q Did any of the officers display any weapons?

A No.

Q You indicated that you stopped Mr. Kray. Now, stopped is sometimes used as a legal term. Let me ask you what you actually did there at the curbside.

A He was standing on the curbside with his back to us, and Schnepfer and I walked up to him, I had my credential folder in my left hand, and I displayed my credentials and said I'm Agent Kempshall with DEA and I'd like to speak with you for a minute.

Q Where was Mr. Kray's traveling companion at that precise moment in time?

A She was to my rear several feet, and Agent Huston and Desmond had just approached her at that same time.

Q Did the person going by the name of Kray speak with you?

A Yes, he did.

Q What—strike that.

Where did you talk to him initially?

A Standing on the curbside right there in front of the airport.

Q A public area?

[39] A Yes.

Q And did you ask him any questions?

A Yes.

Q What did you ask him?

A I first asked him whether he had any identification, personal identification.

Q And what did he say?

MR. GOLDBERG: Your Honor, at this time I would make an objection. Just for the record, I want to find out exactly where this conversation occurred, where and when.

THE COURT: You'll have a chance to ask him. Go ahead, Mr. Santoki.

BY MR. SANTOKI:

Q What did he say?

A He said he did not have any identification on him.

Q What else did you speak with him about?

A I asked him if I could see his airline ticket, and he replied that he'd lost the stub for his airline ticket.

Q Did you ever ask him what his name was?

A Yes.

Q And what did he say?

A He said that he was Andrew Sokolow.

Q What did you then ask him?

A I asked him, if your identity is Andrew Sokolow, why are you flying under the name Andrew Kray?

[40] Q And what did he say?

A He said that an individual who he met on the beach, name of Marty, that he didn't know Marty's last name, had made his flight reservations, and had purchased the tickets, and that his—that Marty had made the name—had made his last name Kray because that was his mother's maiden name.

Q At—

THE COURT: Excuse me just a second. I've got to interrupt you once in a while, because I've read the file here, and there's certain things I need cleared up. Did either you or Officer Shipper, is it? Who was the other officer?

THE WITNESS: Schnepfer.

THE COURT: Schnepfer. Did either you or Officer Schnepfer grab his arm?

THE WITNESS: Not that I recall, Your Honor.

THE COURT: Well, specifically, did you?

THE WITNESS: Not that I recall, no.

THE COURT: Go ahead.

BY MR. SANTOKI:

Q At the time that you spoke with the person who turned out to be Sokolow, did you have any weapons displayed?

A No.

Q Were there any uniformed police officers in the area?

[41] A Not to my knowledge.

Q No lights, no sirens?

A That's correct.

Q Were you physically restraining him in any way?

A No.

Q Had you told him he was under arrest?

A No.

Q Had you told him that he couldn't go anywhere?

A No.

Q Had you threatened him in any way?

A No.

THE COURT: Was there a cab, you know, a fellow who calls cabs, what do you call them?

THE WITNESS: Dispatcher, Your Honor.

THE COURT: Dispatcher. Was there a dispatcher there?

THE WITNESS: Yes, Your Honor.

THE COURT: From the cab company?

THE WITNESS: Yes, Your Honor.

THE COURT: Any other people around?

THE WITNESS: Yes, Your Honor.

THE COURT: Go ahead.

BY MR. SANTOKI:

Q At the time that the person going by the name of Kray told you this business about having met a person named Marty [42] on the beach, et cetera, et cetera, did you form an opinion as to whether or not that was the truth?

A Yes.

Q What was your opinion?

A That he was lying about that.

Q Why did you think he was lying?

A Because I already knew that John Birt had described the person that bought the ticket under Andrew Kray as being a male, physical description that fit Sokolow, and that in fact, he described the black clothing and the gold jewelry, which, in fact, he still had on, and also that he had identified the voice on the tape machine as the person who had bought the ticket, so I knew that the—I was unsure of the identify of the person before me, but I knew that he had purchased the ticket under the name of Andrew Kray.

Q At the time the person that flew under the name of Andrew Kray told you about Marty making the tickets, were you also aware that the return reservation had been made in Miami under the name of Kray?

A Yes, I was.

Q Based upon all of this information, what did you do at that point?

A After we discussed about him flying under an alias, et cetera, I advised him that at this point, I was going to [43] seize his luggage and subject it to a sniffer dog examination.

Q Now, up to that point in time, what was the person going under the name of Kray, what was his demeanor, how was he acting?

A He was one of those slick talking, I mean, very personable salesmen type personality, outgoing, talkative, in a sense.

THE COURT: Did you have an exchange with him out there on the curb whereby he asked what's going on here and you told him, did something like that happen? Did he say what's this all about?

THE WITNESS: I don't recall, Your Honor, he might have, I just don't recall.

THE COURT: Did you tell him, we're looking at you as a possible courier of cocaine?

THE WITNESS: I don't recall.

THE COURT: Well, when you identified yourself, did you tell him we're drug enforcement agents?

THE WITNESS: I have a set routine I go through with these people, and normally, I don't recall specifically with Mr. Sokolow, but I would have to say I don't think so, because I normally, when they ask me, well, what's this all about, my standard reply is—I always say, well, we're looking for somebody coming from the mainland. I don't—

THE COURT: You don't say what for?

[44] THE WITNESS: No, I don't say we're looking at you as a suspected drug courier or anything else. My standard reply is, well, we're just looking for somebody coming from the mainland.

BY MR. SANTOKI:

Q When you asked Mr. Sokolow for his identification or his airline ticket, were you in fact asking, or were you demanding, or were you insisting, or how did that come about?

A I asked him if I could see some personal identification, and he says, well, I don't have any on me. I said, well, how about your airline ticket, do you have that? And he says no, I lost it, I must have left it on the plane.

Q At some point in time, you did indicate to him that you wished to have his luggage examined.

A That's correct.

Q Did you explain why at that point?

A No, I just said, I'm going to have your dog—your luggaged [sic] checked out by a sniffer dog.

* * *

THE COURT: Now, this area is what the 9th Circuit wants to know about, so could you go inch-by-inch from the curb to—through the dog examination?

BY MR. SANTOKI:

Q Yes, sir. Why did you have the bag examined by a narcotic detector dog?

A Because I suspected that he'd gone to Miami to pick up cocaine and bring it back.

[48] Q. Based upon what information?

A The totality of the information, starting with the fact that he had paid for the round-trip tickets in cash from a large roll, the fact that he paid, you know, in cash, thus avoiding using any credit cards, or checks, or anything with his name on it, the fact that it was a very quick turn-around from Miami, which is obviously a notorious source of cocaine for most of the United States. The fact that once I stopped him and talked to him, he stated that he didn't have any personal identification whatsoever. When I asked him for his airline ticket, he also stated that he didn't have his airline ticket.

THE COURT: He'd just gotten off the plane?

THE WITNESS: He'd just—yeah, he'd just come off the plane from Miami, and we had discussed it and figured it out previously, he'd only spent about 24 hours in Florida, he'd flown 6,000 miles to spend 24 hours in Florida, and it had all the classic aspects of a drug courier.

THE COURT: You were aware that some attempt to find somebody named Kray in Hawaii?

THE WITNESS: I knew that they had called his call back number that he had left with United, and that it was an answering machine. I knew that the subscriber to the telephone call back number had come back to a Karl Herman. [49] Actually, at that point, I believed him to be Karl

Herman, I thought he was Karl Herman at that point. I did not believe that Andrew Kray was his correct name, but I thought it was Karl Herman.

THE COURT: So you didn't even believe that Andrew Sokolow was his name?

THE WITNESS: No, I did not, not at that point.

* * *

[65] BY MR. GOLDBERG:

Q And McCarthy had told you that the guy was taking a short flight to Miami, a source city, is that correct?

A [Agent Kempshall] That's correct.

[66] Q. What other—as far as source cities go, isn't it true that San Francisco, and Los Angeles, and San Diego are also source cities?

A It's not necessarily—it's kind of hard to explain. It's not necessarily a straight line, it's more of a branching thing. Yes, Los Angeles is a source of cocaine for Hawaii, specifically. Of course, Miami is the granddaddy source city of them all. I mean, Miami feeds Los Angeles, Los Angeles feeds Honolulu. He just skipped Los Angeles and went straight to the source.

Q San Diego is also considered a source city for Honolulu, is it not?

A In a way, yes, it's a feeder from the mainland.

Q And San Francisco also?

A San Francisco normally is considered a source for hallucinogenics, LSD and pills, and stuff, not so much for cocaine.

Q So an individual doing a short, one day flight to one of those source cities would also be suspicious under the profile?

A Well, it has more—there's more factors involved than just the fact that it's a quick turn-around. There are legitimate reasons that business people might make a short

trip. It's a totality of a lot of different factors involved.

[67] Q There's also legitimate reasons why people may pay cash for tickets, are there not?

A That's correct.

Q When you first approached the defendant at the airport on July 25th, you knew he was coming in from Miami on a short flight, a short trip, he was—left on the 22nd, now he's returning on the 25th.

A That's correct.

Q You knew he had paid cash for a ticket.

A Yes.

Q And someone had told you he was nervous in Los Angeles.

A That's correct.

Q And you knew he was dressed in black with a lot of gold?

A That's correct.

Q And you knew that when you called the telephone number that he said was his, you got his name on the message phone, but in fact it was not in his name.

A Say that again?

THE COURT: Didn't get his name?

BY MR. GOLDBERG:

Q You didn't get—in other words, when you called the telephone number he'd given you guys, you got his voice—

A That's correct.

Q But the phone was registered, unfortunately, to his [68] roommate, a different person.

A To a Karl Herman, yes.

Q Okay. That's all you knew at the time that you first approached him at the airport?

THE COURT: You didn't know it was a different person, he thought it was the same person with a different name.

THE WITNESS: I knew that the individual had been flying under the name Andrew Kray.

BY MR. GOLDBERG:

Q Okay. But you thought it was Karl Herman?

A I did, yes.

Q Now, normally, don't you normally reach these people as they're deboarding the airplane?

A Could you say that again?

Q I'm sorry, let me withdraw that question. When you first observed the defendant, he was at the roadside, he had gotten off the plane and walked all the way down to the street level, had he not?

A We had followed him down.

Q You had followed him down there from where?

A From the plane.

Q Did you attempt to have any conversation with him anywhere along the line?

A No.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

CR. NO. 84-02200

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

ANDREW SOKOLOW, DEFENDANT.

INDICTMENT

{21 U.S.C. § 841(a)(1)}

INDICTMENT

The Grand Jury Charges:

That on or about July 25, 1984, in the District of Hawaii, ANDREW SOKOLOW did intentionally and knowingly possess with intent to distribute approximately 1,063 grams (gross weight) of cocaine, a Schedule II narcotic controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

DATED: Honolulu, Hawaii, August 2, 1984.

A TRUE BILL

/s/ MARY HELEN WONG

FOREPERSON, GRAND JURY

/s/ DANIEL A. BENT

UNITED STATES ATTORNEY

/s/ ELLIOT ENOKI

ASSISTANT U.S. ATTORNEY

UNITED STATES DISTRICT COURT
FOR DISTRICT OF HAWAII

No. CR84-02200-01

UNITED STATES OF AMERICA

vs.

ANDREW SOKOLOW, DEFENDANT

Filed in the United States District Court
District of Hawaii
Jan. 16, 1985
at 4 o'clock and 30 min. PM.
WALTER A. Y. H. CHINN, CLERK

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date January 16, 1985

COUNSEL

WITH COUNSEL Robert Goldberg, Esq.

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea,

FINDING & JUDGMENT

There being a finding of GUILTY
Defendant has been convicted as charged of the offense(s) of having on or about July 25, 1984, in the

District of Hawaii, intentionally and knowingly possessed [sic] with intent to distribute approximately 1,063 grams (gross weight) of cocaine, a Schedule II narcotic controlled substance, in violation of Title 21, United States Code, Section 841(a)(1) as charged in the Indictment.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of FIVE (5) YEARS, with a special parole term of THREE (3) YEARS, and that defendant shall become eligible for parole under 18 U.S.C. § 4205(b)(2), at such times as the Parole Commission may determine.

MITTIMUS stayed to January 30, 1985 at 10:00 a.m.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

SIGNED BY U.S. District Judge

SAMUEL P. KING

SAMUEL P. KING

Date January 16, 1985

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshall or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE 1-16-85

By Dania G. Aibinson

Deputy

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

No. 85-1021

D.C. No. CR 84-002200-02-SPK

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE,

v.

ANDREW SOKOLOW, DEFENDANT-APPELLANT.

[Filed MAY 11 1988]

ORDER

Before: FERGUSON, NORRIS, and WIGGINS, Circuit Judges.

A majority of the panel voted to deny the petition for rehearing and the suggestion for rehearing en banc.

The full court has been advised of the suggestion for en banc hearing and a judge in active service requested that a vote be taken on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

Upon vote of the eligible judges in active service, a majority failed to vote for en banc rehearing.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

Supreme Court of the United States

No. 87-1295

UNITED STATES

v.

ANDREW SOKOLOW

ORDER ALLOWING CERTIORARI. Filed June 6,
1988.

The petition herein for a writ of certiorari to the United
States Court of Appeals for the Ninth Circuit is granted.

A true copy JOSEPH F. SPANIOL, JR.

Test:

Clerk of the Supreme Court of the
United States

By _____
Deputy